Arbitrator's Recommendation

As previously indicated, one of the purposes of the 96 Act was to increase competition in telecommunications. The fact that Verizon would lose revenues by allowing Global to assigning Virtual NXXs in the manner requested forms no basis for denying the requested relief. Therefore, I find Global should be permitted to assign customers NXX codes that are homed in a central office switch outside the local calling area in which the customer resides.

Permitting Global the right to assign Virtual NXXs to customers will result in Verizon collecting no toll revenue nor access charges. A Virtual NXX number assignment is a service provided by the customer's carrier and should not be subsidized by a competing LEC. Under the FCC's rules, which reflect the requirements of Section 251(g) of the 96 Act, reciprocal compensation does not apply to "interstate or intrastate exchange access, information access, or exchange services for such access." Each of these three exempted categories of service have in common the fact that they relate to "the provision of services in connection with interexchange services." In the ISP Remand Order, the FCC's discussion of this exemption shows that it was intended to encompass "calls that travel to points—both interstate and intrastate—beyond the local exchange." Therefore, a Virtual NXX number assignment is not subject to reciprocal compensation. Reciprocal compensation is not due on calls placed to Virtual NXX numbers as the calls do not terminate within the same local calling area in which the call originated.

From the testimony of Verizon witness West, I find that traffic studies are commonly used in the industry to harmonize the law's requirement to base intercarrier compensation on actual geographic end points with the practical difficulties of doing so. I, therefore, recommend to the BPU that Global and other CLECs cooperate with Verizon, whether through traffic studies or otherwise in developing a way for the parties to bill intercarrier compensation that is based on actual endpoints of the traffic.

See recommendations for Issue 3 above for my recommendations as to the language to be adopted.

ISSUE 5. IS IT REASONABLE FOR THE PARTIES TO INCLUDE LANGUAGE IN THE AGREEMENT THAT EXPRESSLY REQUIRES THE PARTIES TO RENEGOTIATE RECIPROCAL COMPENSATION OBLIGATIONS IF CURRENT LAW IS OVERTURNED OR OTHERWISE REVISED.

Global asserts that the language proposed by Verizon is inadequate on the issue of Global's right to renegotiate the reciprocal compensation obligations if the current law is overturned or otherwise revised.

Arbitrator's Recommendation

I find that the specific contract language contained in sections 4.5 and 4.6 of Verizon's contract language clearly addresses Global's right to renegotiate the reciprocal compensation obligations if the current law is overturned or otherwise revised.

I recommend the adoption of the language proposed by Verizon in sections 4.5 and 4.6 of the general Terms and Conditions and the language proposed by Global in section 2.74 its Glossary.

ISSUE 6. WHETHER TWO WAY TRUNKING IS AVAILABLE TO GLOBAL AT GLOBAL'S REQUEST.

Verizon agrees that Global has the option to decide whether it wants to use one-way or two-way trunks for interconnection. However, Verizon asserts that the parties must come to an understanding about the operational and engineering aspects of the two-way trunks between them and that Global should not be permitted to dictate those case specific terms to Verizon. If

Global opts to use two-way trunks, its action will affect Verizon as both carriers will be sending traffic over the same trunk. This will present operational issues for Verizon's own network and therefore require both parties to participate in resolving how this impact is assessed and handled.

Arbitrator's Recommendation

I recommend that Verizon's proposed language in Sections 2.2.3, 2.2.4, and 2.4.1-2.4.3 and 2.4.10 of the Interconnection Attachment which identify operational areas that the parties must address to achieve a workable interconnection arrangement be adopted. The adoption of this language will not interfere with Global's decision as to whether to use two-way trunks.

ISSUE 7. IS IT APPROPRIATE TO INCORPORATE BY REFERENCE OTHER DOCUMENTS, INCLUDING TARIFFS, INTO THE AGREEMENT INSTEAD OF FULLY SETTING OUT THOSE PROVISIONS IN THE AGREEMENT.

Global argues that it is inappropriate to incorporate by reference other documents, including tariffs into the agreement, instead of fully setting out those provisions in the agreement. It objects to the contract language proposed by Verizon because this would give Verizon the ability to change the terms and conditions of the interconnection agreement without Global's assent.

Verizon asserts that the inclusion of the proposed tariff references would not give it the unilateral ability to affect material terms of the interconnection agreement and that under Verizon's proposal, the parties would rely on the appropriate Verizon tariff for applicable price or rates. Verizon further asserts that "when there is a conflict between the terms and conditions of the tariff and those of the interconnection agreement, the terms and conditions in the interconnection agreement would supercede those contained in the tariff. Thus, tariff terms and conditions will only supplement the terms and conditions of the interconnection agreement; they will not alter the interconnection agreement's terms and conditions.

Arbitrator's Recommendation

I recommend that Global's objection to the incorporation by reference of other documents, including tariffs into the agreement, be rejected. Global's proposed contract changes would "freeze" any current tariff prices in its favor. If the rates contained in the interconnection agreement give Global an advantage, it would exploit those rates but if new generally applicable rates were lower, Global would likely claim that it was entitled to purchase service out of the tariff, notwithstanding the existence of the agreement. Any proposed rate change by Verizon would be subject to the process of regulatory review. Global would have the opportunity to appear and object to any proposed rate changes by Verizon. However, to ensure that Global has the opportunity to make any objections to any proposed tariff changes by Verizon, I recommend that Verizon give direct notice to Global of proposed tariff changes filed with BPU..

I recommend the adoption of the language proposed by Verizon in sections 1, 4.7, 6.5, 6.9, 41.1 and 47; section 2.74 of its Glossary; section 9 if its Additional Services; sections 1, 2.1.3.3, 2.1.4, 2.1.6, 2.3, 2.4.1, 5.4, 8, 9.2.2, 10.1 and 10.6 of the Interconnection Attachment; sections 1, 2.1 and 2.2.2 of Resale; sections 1.1, 1.4.1, 1.8, 4.3, 4.7.2, 6.1.11, 6.2.1, 6.2.6 and 12.11 of Unbundled Network Elements; section 1 of Collocation; and sections 1.5 and 2.2.2 of Pricing Attachment.

ISSUE 8. SHOULD THE INTERCONNECTION AGREEMENT REQUIRE GLOBAL TO OBTAIN EXCESS LIABILITY INSURANCE COVERAGE OF TEN MILLION DOLLARS AND REQUIRE GLOBAL TO ADOPT SPECIFIED POLICY FORMS.

Global asserts that Verizon proposes burdensome insurance limits. Verizon's response is that it is reasonable for it to seek protection of its network personnel or other assets in the event Global has insufficient financial resources. Verizon points out that Global and it operate in a highly volatile industry and that either party could be held jointly or severally liable for the negligent or wrongful acts of the other. Under the interconnection agreement, Global will have the ability to collocate at a Verizon facility which will increase Verizon's risks and exposure to loss in many ways.

Arbitrator's Recommendation

This issue has been dealt with other boards in other jurisdictions. With the exception of proceedings before the California Commission involving PacBell and Global, all other boards have found the insurance requirements proposed by Verizon to be reasonable and to be normal within industry standards. No evidence was presented before me which would lead me to conclude that the insurance requested by Verizon should not be adopted.

I recommend that the Section 21 of the General Terms and Conditions proposed by Verizon be adopted in its entirety.

ISSUE 9. SHOULD THE INTERCONNECTION AGREEMENT INCLUDE LANGUAGE THAT ALLOWS VERIZON TO AUDIT GLOBAL'S "BOOKS, RECORDS, DOCUMENTS, FACILITIES AND SYSTEMS."

Global objects to the contract language proposed by Verizon which would permit an audit by an independent certified public accountant selected and paid by the auditing party, who are also acceptable to the audited party, of the records, documents, employees, books, facilities and systems "necessary to assess the accuracy of the Audited Party's bills" on the ground that much of the material contained in these records is competitively sensitive and that if Global were compelled to provide Verizon with access to redacted records, the costs of "sanitizing" those records would be prohibitive.

Arbitrator's Recommendation

As pointed out by Verizon, the proposed billing audits would be conducted by independent certified public accountants, not by it, with appropriate safeguards against disclosure of competitively sensitive information. The purpose of the audit is to obtain information necessary to verify bills and to ensure that rates are being applied appropriately. In addition, the audit provisions proposed by Verizon only allows audits once a year unless a previous audit revealed discrepancies and then no more than once a quarter. Billing audits are appropriate particularly between competitors and the participation of independent certified public accountants will assure the confidentiality of commercial data.

I recommend the language proposed by Verizon in section 7 of General terms and Conditions; section 8.5.4 of Additional Service Attachment; and sections 6.3 and 10.13 of the Interconnection Attachment be adopted.

ISSUE 10. SHOULD VERIZON BE PERMITTED TO COLLOCATE AT GLOBAL'S FACILITIES IN ORDER TO INTERCONNECT WITH GLOBAL.

This is a supplemental issue raised by Verizon. Although Global had the opportunity to respond to this issue, it failed to address it in either its posthearing initial brief or reply brief.

Verizon's position is that "reciprocal collocation" provides it with options for interconnecting with Global. Verizon argues that if it is not able to bring its interconnection facilities to Global, Global could force Verizon to hire Global as a transport vendor and Verizon would have no way to limit interconnection costs. Verizon recognizes that under the 96 Act a

CLEC does not have the duty to offer collocation to an ILEC but argues that nothing prohibits the Arbitrator from allowing Verizon to interconnect with Global via a collocation arrangement at Global's premises. In support for its position, Verizon cites to the decisions by the New York, Ohio and Illinois Commissions which have ruled in Verizon's favor on this issue.

Arbitrator's Recommendation

It appears reasonable to require Global to allow collocation by Verizon, subject to the established restrictions as to technical feasibility and space. This will give Verizon comparable interconnection options to the options that Verizon offers to Global. As pointed out by the Arbitrator in proceedings by Verizon and Global before the Pennsylvania Public utility commission:

> There is nothing in the [96] Act prohibiting the Commission from allowing Verizon to interconnect with the CLECs (GNAPs in this case) via a collocation Arrangement at their premises. As aforesaid, it ensures fair terms for Interconnection and provides Verizon an opportunity to evaluate Whether it is more cost-effective to purchase transport from GNAPs Or build its own facilities.

I recommend that the language proposed by Verizon in section 2.1.5 of the Interconnection Attachment be adopted.

SUPPLEMENTAL ISSUE 11. THE PARTIES' AGREEMENT SHOULD RECOGNIZE APPLICABLE LAW.

Verizon's proposed General Terms and Conditions, Section 4.7 provides that when a change in law is effective, the parties must implement that law at that time. Global's proposed language would require the parties to wait until all avenues for appeal have been exhausted before the applicable law becomes effective.

Arbitrator's Recommendation

In the absence of any stay, the parties must recognize any change in law on its effective date. I recommend the language proposed by Verizon in section 4.7 of the General Terms and Conditions be adopted.

SUPPLEMENTAL ISSUE 12. GLOBAL IS ONLY PERMITTED ACCESS TO UNEs THAT HAD BEEN ORDERED UNBUNDLED AND TO VERIZON'S EXISTING NETWORK.

Verizon asserts that its proposed General Terms and Conditions, Section 42, is necessary to (1) memorialize Verizon's right to upgrade and maintain its network, (2) ensure that Global does not force Verizon to unbundle its network absent a requirement to do so, and (3) make Global financially responsible for interconnecting with Verizon's network.

Global proposes contract language that would effectively give it access to "all" of Verizon's "next generation technology." Global's General Terms and Conditions, Section 42.

Arbitrator's Recommendation

I find Global's language to be vague and ambiguous. I find that Verizon's proposed General Terms and Conditions, Section 47, more than meet its obligations to Global and therefore recommend its adoption.

INTERCONNECTION AGREEMENT

Pursuant to Arbitration Rules Order at Appendix A § C. 10.c., Docket No. TX96070540 (August 15, 1996), within five (5) days after the issuance of this Final decision, Global and Verizon shall submit to the BPU a written and fully executed interconnection agreement based upon the provisions if this arbitration award.

March 7, 2003

Alvin Weiss

ALVIN WEISS
ARBITRATOR.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Global NAPS, Inc. for arbitration pursuant to 47 U.S.C. 252(b) of interconnection rates, terms and conditions with Verizon Florida Inc.	DOCKET NO. 011666-TP ORDER NO. PSC-03-0805-FOF-TP ISSUED: July 9, 2003

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON
BRAULIO L. BAEZ
CHARLES M. DAVIDSON

APPEARANCES:

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FINAL ORDER ON ARBITRATION

BY THE COMMISSION:

TABLE OF CONTENTS

VIII. ASSIGNMENT OF VIRTUAL NXX CODES

ARGUMENTS

According to GNAPs witness Selwyn, GNAPs and other ALECs employ non-geographic assignments of NPA-NXX codes, sometimes referred to as virtual NXX arrangements, in order to offer service that competes directly with Verizon's Foreign Exchange (FX) service. The witness notes that in its proposed interconnection agreement, Verizon has taken the position that GNAPs' local calling area (LCA) should mirror Verizon's LCA for the purposes of reciprocal compensation. Witness Selwyn argues that the LCA is fundamental to the VNXX issue because "the only reason anyone would ever care about assigning a customer in one location a telephone number with an NXX code associated with another location - that is, the "virtual" NXX issue - is if it matters that the customer is not in the local calling area associated with the assigned telephone number."

Witness Selwyn explains that traditionally LCA boundaries have served to delineate the rating treatment for an ordinary telephone call (i.e., whether it would be rated according to the ILEC's local service tariff, or whether toll charges would apply). Witness Selwyn also provided detailed testimony addressing:

- how telephone companies determine whether a call is a local call or if toll charges apply;
- why he believes the local versus toll distinction was originally established;
- why he believes that modern digital telecommunications networks do not support a distinction based upon distance-based cost differences between local and toll;
- why it is necessary for an ALEC to be granted flexibility to make non-geographic assignments of NPA-NXX codes to their customers;
- why he believes that it does not constitute an invasion of the ILEC's toll tariff, if an ALEC uses "virtual" NXX;
- how traditional ILEC FX service works;
- why Verizon's transport costs are unaffected by the location at which GNAPs terminates a Verizon Florida-originated call to a GNAPs customer (including examples and figures to support his position); and

- Verizon's single "500" number statewide local calling mechanism for use by its ISP affiliate, although the witness acknowledges that it does not appear that Verizon is currently providing such a service in Florida.

Regarding the issue of intercarrier compensation for VNXX, witness Selwyn argues that "the costs that an ILEC incurs in carrying and handing off originating traffic to ALECs is entirely unaffected by the location at which the ALEC delivers the call to the ALEC's end user customer." Witness Selwyn contends that as long as the ALEC establishes a POI within the LATA, it should be allowed to offer service in any rate center in the LATA and to terminate calls dialed to that rate center at any location it wishes. As such, the witness believes that it is "reasonable and appropriate" that ALECs be permitted to assign NPA-NXX codes to end users outside the rate center in which the NPA-NXX is homed and still be entitled to full reciprocal compensation.

The GNAPs witness acknowledges that Verizon does not oppose GNAPs' use of VNXX codes, only that if the physical locations of the calling and called parties (e.g., the Verizon customer who originates the call and the GNAPs customer who receives it) are not both within the same Verizon LCA, then GNAPs should be required to pay access charges to Verizon. Witness Selwyn claims that under the conditions described above (i.e., paying access charges), it is not feasible for GNAPs to utilize VNXX codes. In addition, GNAPs states in response to discovery that:

> There appear to be no physical limitations proscribing the use of virtual NXXs. However, provisions dealing with the rating of calls using Verizon's methodology and Verizon's defined local calling areas restrict the economic ability of Global to provide services other than information access service to consumers in Florida by levying access and other charges irrespective of Global's defined local calling areas.

The GNAPs witness also argues that Verizon does not propose to apply equivalent reciprocal compensation treatment for calls placed by ALEC subscribers to Verizon FX numbers as it is proposing for calls placed by its subscribers to ALEC VNXX numbers. He explains that if an ALEC customer dials a Verizon FX number that is rated within the calling party's LCA (as defined by Verizon's tariffs), but is physically delivered to a location outside of that LCA, Verizon will not pay access charges to the ALEC. Moreover, the witness asserts that:

> If Verizon's proposed treatment of VNXX calls were actually driven by principle, then regardless of how Verizon Florida chooses to market or charge for a given service (e.g., FX) offered to its subscribers, if that service involved transport to an end-point that was physically beyond the originating caller's local calling area, then the service should be classified as "interexchange" so that switched access charges apply, rather than be classified as "local" so that reciprocal compensation applies.

Witness Selwyn believes that Verizon's opposition to an ALEC's right to establish its own LCA and to utilize VNXX services is an attempt to deter competition in the local exchange market. The witness asserts that Verizon is able to maintain the distinction between local and toll because it remains the monopoly provider of switched access services to competing interexchange carriers. "Stated simply, the Company's position is that if Verizon treats a particular route as a toll call with respect to retail pricing, its wholesale switched access charges, rather than local reciprocal compensation arrangements, will apply." Moreover, witness Selwyn believes that the economic effect of this practice is to protect Verizon's retail prices by preventing competitors from offering comparable services under structurally different pricing regimes. He argues that there is no reason why competitive marketplace forces should not be permitted to expand or reshape the traditional definition of local calling. In addition, witness Selwyn argues that:

> . . . by "walling off" its local calling areas via this device, Verizon actually protects two categories of retail service - intraLATA toll, and intraLATA foreign exchange (FX) services. Global NAPs' position is that it should be allowed to compete in both of these markets without being burdened with Verizon's *above-cost* access charges that exist to protect the Company's legacy of monopoly-era pricing practices. In contrast, Verizon

> seeks to block Global NAPs' ability to offer expansive local calling areas (or, similarly, to use virtual NXXs) whenever Global NAPS seeks to offer services that would compete directly with Verizon's intraLATA toll and/or foreign exchange offerings.

GNAPs believes that intercarrier compensation should always be based upon the retail LCA as defined by the originating local carrier. Witness Selwyn maintains that if GNAPs treats a particular call as local even if Verizon treats it as toll, then GNAPs should compensate Verizon at the applicable reciprocal compensation rate for terminating the call to the Verizon customer. In support of this position, witness Selwyn cites to 47 U.S.C. §153(47) which defines "Telephone exchange service" as:

> (A) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or (B) comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.

In addition, he notes that 47 U.S.C. §153(48) defines "Telephone toll service" as:

> telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service.

The witness believes that, based on the above definitions, any "telephone service between stations in different exchange areas" for which no separate charge is made is not "telephone toll service." As such, he explains, if calls to Sarasota from Tampa are included in GNAPs' "contracts with subscribers for exchange service," then by definition those calls are not toll calls.

The GNAPs witness also believes these definitions are applicable to the question of whether Verizon is entitled to reciprocal compensation or switched access payments for terminating such calls because the term "exchange access," as defined in 47 U.S.C. §153(16), means the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services. Witness Selwyn argues that charges for exchange access are "thus only applicable for telephone toll services for which there is made a separate charge not included in contracts with subscribers for exchange service." If GNAPs does not impose "a separate charge" for calls that are included in its retail local calling areas, then those calls are not "telephone toll service" and the witness avers they are not subject to switched access charges.

Furthermore, GNAPs contends that:

> The interconnection agreement between the parties must not work to limit GNAPs' ability to compete and in so doing afford special protection to the ILECs' market, pricing practices, or other aspects of its incumbency - particularly since Verizon's wireless affiliate is permitted to compete with the Verizon ILEC entity and exchange most intraLATA traffic, and some inter-LATA traffic as well, on the basis of reciprocal compensation, not access charges.

GNAPs argues that it is not required to pay access charges on calls that traverse routes that Verizon treats as toll, or "that whatever impact GNAPs' expanded local calling would have upon Verizon Florida's revenues would be consequentially different than the impact arising from Verizon's own wireless affiliate - and other CMRS providers - exemption from access charges on intra-MTA calls." The witness explains that while a competitive loss of retail sales to GNAPs might erode Verizon's shareholder earnings, there is no basis upon which the FPSC can conclude that any such loss would so adversely impact Verizon's financial position as to invoke extraordinary relief measures or put any of its franchised services at risk. Witness Selwyn maintains that past attempts by ILECs to explicitly recover "competitive losses" have been soundly rebuffed by state regulators.

Last, witness Selwyn states that "the Commission should not act to protect Verizon Florida or any other incumbent LEC with respect to the financial consequences of a loss of business to competing local carriers."

Verizon witness Haynes provides definitions for several terms which he believes are the foundation for understanding the virtual NXX issue. He also provides testimony regarding how a customer's telephone number or "address" aids in the proper call routing and rating. The Verizon witness explains that NXX codes traditionally played a role in intercarrier compensation. Specifically, he notes that although not determinative of the underlying intercarrier compensation owed, carriers have traditionally exchanged NPA/NXX information in order to facilitate classification and rating of calls for intercarrier compensation purposes.

Witness Haynes believes that ALECs have used a virtual NXX for two main purposes. First, the virtual NXX allows an ALEC to alter the pricing which the calling party typically pays to complete a call, with no charge levied on the called party. Second, he believes that because ILECs have no information about the location of an ALEC's customer, ALECs have used VNXXs to "trick" ILEC billing systems. The Verizon witness contends that by "tricking" the billing system, the ILEC does not: 1) assess a toll charge on its end-user dialing the ALEC's customer outside the local calling area; and 2) the ILEC does not assess appropriate access charges that it normally would charge an interexchange carrier, but rather pays reciprocal compensation to the ALEC, because the call appears to the ILEC billing systems as local.

In addition, witness Haynes states that ALECs typically assign VNXX codes to customers that are expected to receive a high volume of incoming calls from ILEC customers within the exchange associated with the NXX. He explains that it is common for an ALEC to allow an ISP to collocate with the ALEC switch, and then the ALEC assigns that ISP telephone numbers associated with every LCA within a broad geographic area. The ISP would then be able to offer all of its subscribers a locally rated access number without having to establish more than a single physical presence in that geographic area. If the ISP had been assigned an NXX associated with the calling area in which it is located, many of those calls may be rated as toll calls. Therefore, in that situation, Verizon maintains that the ALEC avoids access charges and collects reciprocal compensation on the incoming calls.

Verizon contends that if GNAPs obtains a VNXX for its customers, it should not affect the intercarrier compensation owed. Specifically, witness Haynes notes:

> As the Commission recognized in the generic docket I discussed earlier, carriers can assign phone numbers to customers located outside the geographic area with which the NPN/NXX is associated, but the actual end points of the call will govern intercarrier compensation.

The witness emphasizes that Verizon proposes no contract language that prohibits GNAPs from assigning telephone numbers to end users located outside of the rate center to which the telephone numbers are homed. Rather, the witness explains that Verizon's proposed contract language ensures that GNAPs cannot alter the appropriate intercarrier compensation due by virtue of GNAPs' "virtual" assignment of NPN/NXX codes. Moreover, witness Haynes believes that Verizon's proposal is consistent with the FPSC's decision in the generic docket, and the proposed contract language ensures that traffic is not subject to reciprocal compensation unless it originates and terminates within Verizon's LCA.

Witness Haynes maintains that because GNAPs' virtual NXX traffic is not local in nature, it should not be subject to reciprocal compensation (which is applicable only on local calls), and access charges should continue to apply. The witness argues that VNXX traffic is interexchange telecommunications, as evidenced by the end points of the call. In addition, he states "if virtual NXX traffic is deemed subject to reciprocal compensation, Verizon would be required to pay terminating reciprocal compensation to GNAPs despite the fact that Verizon would be responsible for hauling the traffic beyond Verizon's local calling scope." If Verizon is required to route traffic beyond the local calling scope and to pay reciprocal compensation, while collecting only the basic local exchange rates from the Verizon retail end-user, then Verizon is not fairly compensated for the VNXX traffic. The witness again asserts that we have already concluded that VNXX calls are not local calls requiring payment of reciprocal compensation.

Verizon claims that there is now a method to accurately track and bill traditional FX and VNXX traffic consistent with our order in Docket No. 000075-TP. Witness Haynes explains that Verizon recently conducted a study in Florida to identify calls originated by ALEC customers and terminated to Verizon FX numbers. The study matched call records for calls from facilities-based ALECs to a list of telephone numbers that Verizon assigned to FX service lines. The study provided Verizon with a means of accurately identifying the access revenue to which ALECs would be entitled for ALEC-originated calls terminated to Verizon FX numbers. At the same time, Verizon considered what approach would be required to properly account for traffic originated by Verizon customers that terminated on ALEC VNXX numbers. Two options were identified:

- One option would be for the CLEC to conduct a study, similar to the one performed by Verizon, to quantify the number of Verizon-originated minutes that were delivered to CLEC virtual NXX numbers.

- The other option would be for the CLEC to notify Verizon of the numbers it has assigned as virtual FX numbers. In this scenario, Verizon would modify its traffic data collection system to capture all traffic delivered to the NPA-NXXs associated with the virtual NXX numbers. A query could then be run to identify what portion of the traffic delivered to the NPA-NXXs was virtual NXX traffic. A billing adjustment would then be entered into each Party's billing system to properly account for the Verizon traffic delivered to the CLEC virtual NXX numbers.

Verizon states that it is prepared to work with GNAPs to implement one of these options so that traffic can be property billed. Also, according to the witness, neither option presents significant technical or system enhancement issues for Verizon.

Witness Haynes notes that currently Verizon and GNAPs are not exchanging traffic in Florida; however, in the ten states where the parties currently exchange traffic, the ratio of originating traffic exchanged through October 2002 between the parties' respective affiliates was over 99% Verizon to less than 1% GNAPs. Witness Haynes also states that in GNAPs' January 7, 2003, responses to Verizon's discovery requests, it stated that "most traffic carried by Global is information access service traffic and that it provides no dial-tone service to a Florida customer." As such, Verizon believes that the traffic ratio for Florida can be expected to mirror that of the other ten states where the parties exchange traffic. Therefore, the witness argues that it is fair to conclude that for over 99% of the traffic the parties exchange, Verizon will originate the traffic, and one end point will be in LATA 952 (the "Tampa LATA"). Because Global admits that it terminates no traffic in the Tampa LATA, Verizon believes it is also fair to conclude that the other end point will be outside the Tampa LATA.

Verizon believes that it is common for GNAPs' customers to collocate at GNAPs' switch locations, making GNAPs' switch locations very likely end points to the traffic Verizon sends it. In addition, witness Haynes notes that notwithstanding the interLATA, and even interstate end points of the traffic, GNAPs witness Selwyn suggests that the parties' agreement should transform all traffic into reciprocal compensation (rather than access) traffic. According to Verizon witness Haynes, GNAPs witness Selwyn suggests that it would be appropriate for Verizon and GNAPs to make intercarrier compensation entirely dependent on the assigned NPA-NXX codes.

Witness Haynes disagrees with several points addressed in the testimony of GNAPs witness Selwyn. First, witness Haynes argues that GNAPs' allegation that its VNXX service is just like Verizon's traditional FX service is incorrect. The Verizon witness notes that while the two services are functionally alike, the similarity ends there. Specifically, he explains that Verizon's FX service is a private line toll substitute service designed so that a calling party in the "foreign" exchange may place to the FX customer, located outside the caller's local calling area, what appears to be a local call. For traditional FX service, Verizon primarily uses its own network to provide FX service. To the extent that another carrier's customer originates a call to a Verizon FX customer, Verizon agrees, consistent with its position here, that it should not charge the other carrier reciprocal compensation to terminate the call. Unlike Verizon's FX and 500-number services, GNAPs primarily relies upon Verizon's transport network to provide its customer the toll-free calling service; thus, unlike traditional FX services, the intercarrier compensation question is paramount, according to the Verizon witness.

Second, contrary to the opinion of GNAPs witness Selwyn, witness Haynes does not believe that the definition of LCA is fundamental to the VNXX issues. Witness Haynes contends that "Global's proposals relate to each other only in their common effect of allowing Global to step into the shoes of the Commission in deciding what traffic is subject to reciprocal compensation versus access charges." Witness Haynes continues by explaining that GNAPs' originating carrier proposal allows GNAPs to avoid paying access charges should it ever have customers who originate calls (i.e., outbound calls). Moreover, witness Haynes believes that under GNAPs' proposal, GNAPs wishes to establish the LCA not just for its own customers, but for Verizon's customers as well.

Third, witness Haynes argues that witness Selwyn's claim that "Global's interconnection proposals on Verizon would be de minimis" is not helpful in resolving the VNXX issue. Witness Haynes argues that although witness Selwyn does not directly apply his transport cost analysis to his discussion of the VNXX issue, GNAPs does attempt to support its VNXX proposal with reference to witness Selwyn's conclusion that Verizon's transport costs are "de minimis" and unaffected by the actual end points of the traffic at issue. Witness Haynes believes that in the context of the parties' interconnection agreement, the intercarrier compensation disputes relate to drawing a line between traffic that is subject to reciprocal compensation and traffic that is not. Moreover, he notes that the FPSC has acknowledged that the proper application of a particular intercarrier compensation mechanism is not based upon the costs incurred by a carrier in delivering a call, but rather upon the jurisdiction of a call as being either local or long distance.

Fourth, witness Haynes disagrees with witness Selwyn's suggestion that the local/toll rating distinction is outdated. The Verizon witness explains that our local/toll distinction remains the backbone of our universal service policy. Although GNAPs witness Selwyn discusses "distance" as an outdated factor in retail and intercarrier pricing, he entirely ignores the role of implicit support for universal service.

Fifth, witness Haynes argues that witness Selwyn's claim that when GNAPs' VNXX assignments cause Verizon to lose toll revenue it would otherwise collect from its end users, Verizon has suffered a competitive loss of business, is an unfair characterization. The Verizon witness explains that when GNAPs assigns to a "non-local" GNAPs customer a phone number that "looks local" to Verizon's end users, GNAPs tricks Verizon's billing system into foregoing an otherwise applicable toll charge to Verizon's end users. Witness Haynes believes that because GNAPs has not taken a Verizon customer or sold any service to a Verizon customer, GNAPs cannot characterize this as a "competitive loss" to Verizon. Moreover, it is Verizon's network that GNAPs is using to provide a GNAPs customer with the ability to receive toll-free calling from Verizon customers. The witness argues that GNAPs' strategy is simply an attempt to game the intercarrier compensation system in a way that will force Verizon to provide all the transport for free, prevent Verizon from charging its customer, and allow GNAPs to charge both its customer and Verizon.

Furthermore, witness Haynes notes that GNAPs witness Selwyn attempts to characterize Verizon's loss of toll revenue as an "opportunity cost." Again the Verizon witness argues that this characterization is flawed. He states:

> Dr. Selwyn suggests that when Verizon provides Global a service, it may forego revenue for services it otherwise would have provided its own retail end users. When Verizon provides Global service in connection with Global's virtual NXX assignments, however, Global does not propose to pay Verizon at all. Rather, Global proposes to charge Verizon reciprocal compensation. Under Global's theory, Verizon should pay Global for the "opportunity" to forego toll revenues.

The Verizon witness maintains that it is not only Verizon that disagrees with GNAPs' witness Selwyn, but also several other state Commissions, including the FPSC. He notes that we have found that VNXX traffic is not subject to reciprocal compensation. In addition, he states that the state Commissions in California, Connecticut, Georgia, Illinois, Maine, Massachusetts, Maryland, Missouri, New York, North Carolina, New Hampshire, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, and

Vermont have recognized that the ILEC's calling area is the proper basis for distinguishing between reciprocal compensation and access traffic (this list includes decision makers in nine of the ten states in which the parties have arbitrated this exact same issue). Witness Haynes contends:

> Dr. Selwyn's proposal departs from principles of intercarrier compensation in terms of the type of intercarrier compensation owed and the carrier that should pay it. The end points of the traffic span LATAs, making the traffic exchange access and exempt from reciprocal compensation as a legal matter.

Last, the Verizon witness contends that the fact that GNAPs is the carrier providing its customers with a toll-free calling service, and charging its customers for it, makes GNAPs the carrier that should pay Verizon the applicable intercarrier compensation.

DECISION

Because the parties in this arbitration could not negotiate "the best intercarrier compensation mechanism" to apply to non-ISP virtual NXX/FX traffic, as envisioned by our prior decision, we must address it here.

The issue which we must decide is what intercarrier compensation should apply to non-ISP bound VNXX traffic. This issue is substantively similar to Issue 15 in our generic reciprocal compensation docket (Docket No. 000075-TP). In fact, many of the arguments considered by us in Docket No. 000075-TP were also presented in this docket.

Regarding intercarrier compensation for non-ISP VNXX traffic, we concluded that:

> . . . we find that intercarrier compensation for calls to these numbers shall be based upon the end points of the particular calls. This approach will ensure that intercarrier compensation will not hinge on a carrier's provisioning and routing method, nor an end user's service selection. We find that calls terminated to end users outside the local calling area in which their

> NPA/NXXs are homed are not local calls for purposes of intercarrier compensation; therefore, we find that carriers shall not be obligated to pay reciprocal compensation for this traffic. Although this unavoidably creates a default for determining intercarrier compensation, we do not find that we mandate a particular intercarrier compensation mechanism for virtual NXX/FX traffic. Since non-ISP virtual NXX/FX traffic volumes may be relatively small, and the costs of modifying the switching and billing systems to separate this traffic may be great, we find it is appropriate and best left to the parties to negotiate the best intercarrier compensation mechanism to apply to virtual NXX/FX traffic in their individual interconnection agreements. While we hesitate to impose a particular compensation mechanism, we find that virtual NXX traffic and FX traffic shall be treated the same for intercarrier compensation purposes. (emphasis added)

Verizon maintains that our conclusion in the generic docket is correct as a matter of law. Specifically, Verizon argues:

> With regard to the question of what intercarrier compensation applies to VNXX traffic, neither Verizon or GNAPs has presented any facts that could lead the Commission to alter its reasoning that VNXX traffic is not subject to reciprocal compensation. That conclusion was based on federal law. Because that law has not changed, there is no basis for the Commission to change its reasoning that reciprocal compensation does not apply to VNXX traffic.

GNAPs, on the other hand, appears to disagree with our conclusion and believes reciprocal compensation is appropriate for VNXX traffic. GNAPs filed extremely limited testimony addressing our decision in Docket No. 000075-TP even though it acknowledged that Issue 5 in this arbitration is the same as Issue 15 in the generic docket.[3] As part of our staff discovery, GNAPs was asked if it had

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[3]The parties were given the opportunity to file supplemental direct testimony to address the outcome of Docket No. 000075-TP.

presented any new facts in the arbitration case that could lead us to reach a different conclusion than that in Order No. PSC-02-1248-FOF-TP or our vote on reconsideration at the December 17, 2002, Agenda Conference. GNAPs responded: "Not yet, although the Commission should note the method by which the New Hampshire [sic] resolved the transport of ISP-bound information access traffic by assigning a specific NXX for such traffic . . . ."

In its testimony GNAPs presented several arguments as to why reciprocal compensation charges, rather than access charges, should apply to VNXX traffic. Many of the arguments were previously addressed by us in Docket No. 000075-TP. For example, witness Selwyn argues "the costs that an ILEC incurs in carrying and handing off originating traffic to ALECs is entirely unaffected by the location at which the ALEC delivers the call to the ALECs' end user customer." We disposed of that argument in our generic docket by stating:

> We acknowledge that an ILEC's costs in originating a virtual NXX call do not necessarily differ from the costs incurred originating a normal local call. However, we do not believe that a call is determined to be local or toll based upon the ILEC's costs in originating the call. In addition, we do not believe that the proper application of a particular intercarrier compensation mechanism is based upon the costs incurred by a carrier in delivering a call, but rather upon the jurisdiction of a call as being either local or long distance.

Order No. PSC-02-1248-FOF-TP, p. 30.

GNAPs also argues that Verizon does not propose to apply equivalent reciprocal compensation treatment for calls placed by ALEC subscribers to Verizon FX numbers as it is proposing for calls placed by its subscribers to an ALEC's VNXX number. This matter was also addressed in our generic docket. In that docket the ALECs

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GNAPs did not file any supplemental testimony because they believe ". . . its Direct and Rebuttal testimony is sufficient for the Commission to make a well-reasoned decision supported by fact and law."